

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

ALAN WALTER,

Plaintiff,

Civil Case No.:

v.

1:19-cv-01583-WMS

CSX TRANSPORTATION, INC.,

Defendant.

**NOTICE OF MOTION FOR
SUMMARY JUDGMENT**

PLEASE TAKE NOTICE, that upon the affidavit of Philip M. Gulisano, sworn to on the 15th day of September, 2021, together with attached exhibits, defendant's Rule 56.1 Statement of Material Facts in Support of Defendant's Motion for Summary Judgment dated September 15, 2021, the accompanying Memorandum of Law, and all the pleadings and proceedings had herein, defendant CSX TRANSPORTATION, INC. will move this Court as soon as counsel may be heard, before the Honorable William M. Skretny, United States District Judge for the Western District of New York, at the Robert H. Jackson United States Courthouse, 2 Niagara Square, Buffalo, New York 14202, for an Order pursuant to Federal Rules of Civil Procedure 56 granting defendant summary judgment and entering judgment and dismissal of plaintiff's Complaint, in its entirety, with prejudice and on the merits, on the grounds that: (1) Plaintiff's **negligence and Labor Law § 200 claims** must be dismissed as a matter of law because it is irrefutable that CSX exercised no supervisory control over the work that plaintiff was performing at the time of the alleged accident, CSX did not cause the missing plank, and also had no notice or knowledge of the missing plank; (2) Plaintiff's **Labor Law § 240(1) claim** must be dismissed as a matter of law because plaintiff stepping through an opening in a trailer deck – an opening that existed solely due to a missing

single, wooden plank and which was only one to one-and-a-half feet deep – does not involve a gravity-related hazard against which Labor Law §240(1) was designed to protect; and (3) Plaintiff's **Labor Law § 241(6) claim** must be dismissed as a matter of law because none of the alleged New York Industrial Code provisions apply to the facts of this case.

PLEASE TAKE FURTHER NOTICE, that pursuant to W.D.N.Y. rules, that opposing papers, if any, must be filed 28 days from the filing of the defendant's motion for summary judgment, absent any court order modifying same.

PLEASE TAKE FURTHER NOTICE, that defendant requests the opportunity to submit and file reply papers to plaintiff's response to the herein motion.

PLEASE TAKE FURTHER NOTICE, that defendant also requests the opportunity to argue the herein motion before the court.

DATED: Buffalo, New York
September 15, 2021

Respectfully submitted,

NASH CONNORS, P.C.



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